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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.02.2007

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.72 of 2007

Commissioner of Income-Tax
Cent. Circle-III, Chennai. ... Appellant / Respondent.

Vs.

S.Palanivel ... Respondent / Appellant.

The above T.C.(Appeal) is preferred under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, dated 8.9.2006 made in IT(SS)A No.78/Mds/2002 for the block assessment period from 1.4.90 to 15.7.99 against the order of the Commissioner of Income Tax [A] II, Coimbatore dated 26.2.2002 and made in ITA.No.491/C/2001-2002 against the Order of the Deputy Commissioner of Income Tax, Central Circle - I, Coimbatore dated 19.06.2001 and made in G.I.No.P-710.

For Appellant : Mr.J.Narayanaswamy

J U D G M E N T

(Judgment of the Court was made by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal made in IT(SS)A No.78/Mds/2002, dated 8.9.2006.

2. The brief facts are: A search was conducted by the Revenue officials under Section 132 of the Income-tax Act, 1961 in the residence and in the office premises of the assessee on 15.7.99 and based on the materials found during the search, a block assessment was framed for the block period 1.4.90 and 15.7.99 and an order was passed for the said block period on 19.6.2001 levying a surcharge at 17% on the tax payable on the block assessment. Aggrieved by the said order of block assessment, the assessee filed an appeal before the Commissioner of Income-tax (Appeals), who upheld the order of the asseesing officer levying surcharge by order dated 26.2.2002. The Tribunal, on further appeal by the assessee, held that prior to introduction of proviso to Section 113 with effect from 1.6.2002, whereby it was clarified that surcharge as applicable would be leviable in cases of block assessments, the levy would fail, since the

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search in the present case was prior to 1.6.2002 and hence, surcharge is not imposable. Aggrieved by the said order of the Tribunal, the Revenue has preferred the above appeal raising the following substantial questions of law:

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that surcharge is not applicable to block period 1.4.90 to 15.7.99 ?
>
> 2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that surcharge is not applicable to block assessments if the search took place prior to introduction of the proviso to sec.113 with effect from 1.6.2002, even though Finance Acts of different years falling within the block period prescribed levy of surcharge ?
>
> 3. Whether in the facts and circumstances of the case, the Tribunal was right in holding that surcharge is not leviable on block assessments during the relevant period, on the ground that the calculation is complex ?"

3. Heard Mr.J.Narayanaswamy, learned standing counsel appearing for the Revenue.

4. The Punjab and Haryana High Court in **COMMISSIONER OF INCOME-TAX v. ROSHAN SINGH MAKKER, [(2006) 287 I.T.R. 160],** has already decided the issue raised in the first and second questions against the Revenue. In the said case, the Punjab and Haryana High Court, after referring to Section 113 and the relevant proviso levying surcharge, held that since the search was conducted on June 1, 2000, i.e., before the insertion of the proviso in section 113 of the Act, with effect from June 1, 2002, the levy of surcharge envisaged under this proviso will not be attracted. The relevant portion of the said judgment of the Punjab and Haryana High Court in the case cited supra reads as follows:-

> "5. We have perused the order passed by the Tribunal and section 113 of the Act in which new proviso was inserted with effect from June 1, 2002, by the Finance Act, 2002. The provisions of section 113 of the Act are as under :
>
> "113. Tax in the case of block assessment of search cases.— The total undisclosed income of the block period, determined under section
> 158BC, shall be chargeable to tax at the rate of sixty per cent. :
>
> Provided that the tax chargeable under this section shall be increased by a surcharge, if any, levied by any Central Act and applicable in the assessment year relevant to the previous year in which the search is initiated under section 132 or the requisition is made under section 132A."

6. The relevant clause of the Notes on Clauses is extracted

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below (see [2002] 254 ITR (St.) 118, 149) :

"Clause 41 seeks to amend section 113 of the Income-tax Act relating to tax in the case of block assessment of search cases.

Under the existing provision of the said section, the total undisclosed income of the block period, determined under section 158BC, shall be chargeable to tax at the rate of sixty per cent.

It is proposed to insert a proviso in the said section to provide that the tax chargeable under that section shall be increased by a surcharge, if any, levied by any Central Act and applicable in the assessment year relevant to the previous year in which the search was initiated under section 132 or requisition was made under section 132A.

This amendment will take effect from June 1, 2002." (emphasis supplied)"

7. We have perused section 113 of the Act, especially the proviso added on June 1, 2002, which provides for levy of surcharge. Counsel could not dispute that the same has not been given retrospective effect on the language of clause 41 of the Notes on Clauses is in clear terms.

8. Since the search in the present case was conducted on June 1, 2000, i.e., before the insertion of the proviso in section 113 of the Act, with effect from June 1, 2002. The levy of surcharge envisaged under this proviso will not be attracted in the present case."

(emphasis supplied)

5. Following the above view of the Punjab and Haryana High Court in the case cited supra, a Division Bench of this Court, in which one of us was a party (P.D.DINAKARAN,J.), in T.C.(A) No.46 of 2007 [(**between Commissioner of Income-tax v. M/s.Neotech Company (Firm)**], by order dated 7.2.2007, held that surcharge is not applicable to block assessments in respect of the search conducted prior to the introduction of proviso to Section 113.

Admittedly, in the instant case also, the search was conducted on 15.7.99, which is prior to the introduction of proviso to section 113, i.e., 1.6.2002. Hence, following the above said decisions, the issue raised in the first and second questions are decided in the affirmative, against the Revenue and in favour of the assessee. In that view of the matter, the issue raised in the third question need not be gone into.

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Accordingly, finding no substantial question of law arises for consideration, the appeal stands dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

sra

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Bench "D", Chennai.
2.The Commissioner of Income Tax
(Appeals) II, Coimbatore.
3.The Deputy Commissioner of Income-tax,
Central Circle-I, Coimbatore.
4. The Commissioner of Income Tax,
Cent. Circle III, Chennai.

+ 1 CC To Mrs.Pushya Sitaraman, Advocate, SR NO.8974

T.C.(A) No.72 of 2007

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